



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,870	11/18/2003	Jorge Gustavo Vigil	P69259USD	3134
136 7590 10/16/2008 JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004				
EXAMINER				
QAZI, SABIHA NAIM				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/714,870

Applicant(s)

VIGIL ET AL.

Examiner

Sabiha Qazi

Art Unit

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Final Office Action

Claims 6-10, 12-14 are pending. No claim is allowed at this time.

Amendments are entered.

Summary of this Office Action dated October 13, 2008

1. Copending Applications
2. Specification
3. 35 USC § 103(a) Rejection
4. Data in specification
5. Response to Remarks
6. Conclusion
7. Communication

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Copending Applications

Applicants must bring to the attention of the examiner, or other Office official involved with the examination of a particular application, information within their knowledge as to other copending United States applications, which are "material to patentability" of the application in question. MPEP 2001.06(b). See *Dayco Products Inc. v. Total Containment Inc.*, 66 USPQ2d 1801 (CA FC 2003).

Specification

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Examiner notes, a typing error in line 1 on page 5. In “additi n” should be “addition”. Applicant is requested to correct it.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6-10, and 12-14 are rejected under 35 U.S.C. 103 (a) as being unpatentable over GILLIPSIE et al. (US Patent 5,633,397), CHAN et al. (EPA

0206537). These references teach the process of making glyphosate compositions which embraces Applicant's claimed invention.

GILLIPSIE teaches that certain solid/solid reaction methods for making dry ammonium glyphosate. Reacting ammonium bicarbonate with glyphosate acid, is described in French Publication No. 2.692.439 is believed to yield a dry ammonium glyphosate composition. In French Patent Publication No. 2.692.439 (which was filed on May 19, 1993 and is assigned to Productos Osa SACIFIA), teaches a phytotoxic preparation comprising the monoammonium salt of N-phosphonomethylglycine as a powder or granule in combination with a wetting agent, surfactant and/or a pulverulent additive. GILLIPSIE clearly teaches that the **monoammonium salt is derived from reacting glyphosate acid with ammonium carbonate**". See the entire document especially column 2, lines 25-33 and column 4, lines 55-61.

CHAN et al. teaches a solid, phytoactive, N-phosphono-methyl-N-carboxy-methyl compositions. It further discloses a processes for the preparation of such compositions by

(a) forming an initial mixture comprising a phytoactive N-phosphonomethyl-N-

carboxymethyl compound, a solvent and a molten surfactant, the surfactant being solid at ambient temperatures;

(b) removing solvent from the initial mixture to form a final mixture at a temperature above the melting point of the surfactant;

(c) cooling said final mixture to a temperature below the melting point of the surfactant to form a N- phosphonomethyl-N-carboxymethyl composition which is solid at ambient temperatures; and

(d) processing said composition into particulate form, such as pellets, flakes, granules, or powders. The reference further teaches the use of the prepared composition in controlling vegetation. See the entire document especially the abstract, lines 21-33 on page 3, lines 1-1-9 on page 4, lines 16-33 on page 6, and lines 1-2 on page 7, lines 19-31 on page 11.

It would have been obvious to one skilled in the art to prepare additional useful compositions by using solid surfactants at ambient temperature because the reference teaches that when solid, the surfactant should be readily soluble. Motivation to use solid surfactant has been provided because it teaches that it is important that surfactant is solid at ambient temperatures, i.e. it must be solid at the highest temperature at which the solid produce may be exposed before it is mixed with the diluents by the ultimate user. Such temperature is generally in

the range of from -20 to 50 C. Applicant's claimed temperature is 25 C which overlaps the range taught by the reference. In absence of any criticality and/or unexpected results presently claimed invention has been considered obvious to one skilled in the art at the time the invention was filed.

In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

Data in Specification

The Examiner has considered data in specification. The data is unclear. In formulation A the name of liquid tensioactive agent is missing. Furthermore, no unexpected results are seen. Applicant should explain the novelty and unexpected property of their invention. The declaration filed on September 15, 2005 has been considered.

Response to Remarks

- Rejection under 35 U.S.C. 112, second paragraph is withdrawn because claims are amended.

- Applicant's arguments are fully considered but are not found persuasive. Applicant argue that the reaction to form ammonium salt by ammonium carbonate and glyphosate would not have been obvious. Examiner respectfully disagrees because process of making ammonium salt as has been claimed would have been obvious to one skilled in the art because this reaction is a simple acid-base reaction. Glyphosate is a solid at room temperature having m.p. 185C. GILLIPSIE teaches that the monoammonium salt of glyphosate can be prepared from reacting glyphosate acid with ammonium carbonate. See KSR International Co. V. Teleflex Inc. 550, 82 USPQ2d 1385 (2007).
- Applicant arguments regarding 103 (a) rejections were fully considered and were found persuasive therefore rejection over ARNOLD (US Patent 5,612,285) and KUCHIKATA (US Patent 6,228,807) is withdrawn.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day except Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Krass Frederick can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sabiha Qazi/
Primary Examiner, Art Unit 1612